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## BEFORE THE ARIZONA CORPORATION COMMISSION

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## COMMISSIONERS

Arizona Corporation Commission

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MAY 01 2014

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SUSAN BITTER SMITH

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ORIGINAL

IN THE MATTER OF THE APPLICATION  
OF EPCOR WATER ARIZONA INC.,  
AN ARIZONA CORPORATION, FOR A  
DETERMINATION OF THE CURRENT  
FAIR VALUE OF ITS UTILITY PLANT  
AND PROPERTY AND FOR INCREASES  
IN ITS RATES AND CHARGES FOR  
UTILITY SERVICE BY ITS MOHAVE  
WATER DISTRICT, PARADISE VALLEY  
WATER DISTRICT, SUN CITY WATER  
DISTRICT, TUBAC WATER DISTRICT,  
AND MOHAVE WASTEWATER  
DISTRICT.

DOCKET NO: WS-01303A-14-0010

EPCOR'S RESPONSE TO MOTION  
TO STAY AND REMAND

EPCOR Water Arizona Inc. ("EWAZ" or "Company") responds to the Motion to Stay and Remand ("Motion") docketed by Marshall Magruder on April 24, 2014.<sup>1</sup> Mr. Magruder's Motion is procedurally improper and lacks merit for the reasons below.

In his motion, Mr. Magruder argues that this docket "be stayed and remanded back to EPCOR and that EPCOR resubmit after demonstrating compliance with Commission Order No. 71410 by conducting the pre-submission communication actions with its customers before submitting a consolidated rate case for ALL its water and all its wastewater service areas, to eliminate discrimination between locations for the total service area of the company."<sup>2</sup> Boiled down, the gist of Mr. Magruder's Motion is that this rate case must be stayed pending compliance with Decision No. 71410.

<sup>1</sup> When Mr. Magruder filed his motion on April 24, the Administrative Law Judge had not yet issued a procedural order in this case. As such, EWAZ's response to Mr. Magruder's motion is due ten days after the motion was filed in accordance with Arizona Rule of Civil Procedure 7.1(a).

<sup>2</sup> Motion at 6 (emphasis in original).

1 As a matter of law and fact, the Administrative Law Judge should deny the Motion  
2 for several dispositive reasons. To start, the Motion is procedurally improper because Mr.  
3 Magruder is not a party in this 2014 rate case. Mr. Magruder apparently filed a motion to  
4 intervene on April 25, 2014, but Mr. Magruder has not yet been granted intervenor status.  
5 For that reason, Mr. Magruder's Motion is premature, procedurally improper and should  
6 be summarily denied.

7 On its merits, Mr. Magruder's Motion is factually and legally meritless because  
8 EWAZ has complied fully with Decision No. 71410 relating to possible rate  
9 consolidation. The Commission issued Decision No. 71410 on December 8, 2009 in the  
10 2008 rate case for Arizona-American's<sup>3</sup> Agua Fria, Havasu, Mohave, Paradise Valley,  
11 Sun City West and Tubac water districts and Arizona-American's Mohave wastewater  
12 district (ACC Docket Nos. W-01303A-08-0227 and SW-01303A-08-0227).

13 In Decision No. 71410, the Commission ordered that "this docket shall remain  
14 open for the limited purpose of consolidation in the Company's next rate case with a  
15 separate docket in which a revenue-neutral change to rate design of all Arizona-American  
16 Water Company's water districts or other appropriate proposals or all Arizona-American's  
17 water and wastewater districts or other appropriate proposals may be considered  
18 simultaneously, after appropriate public notice, with opportunity for informed public  
19 comment and participation."<sup>4</sup> The Commission also ordered that "the Company shall  
20 commence a dialogue with its customers as soon as practicable, and will initiate town  
21 hall-style meetings in all of its service territories to begin communicating with consumers  
22 the various impacts of system consolidation in each of those service territories, and to  
23 collect feedback from consumers on such consolidation."<sup>5</sup>

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25 <sup>3</sup> In Decision No. 72668 issued on November 17, 2011, the Commission approved  
EWAZ's acquisition and ownership of the various Arizona-American utilities in Arizona.

26 <sup>4</sup> ACC Decision No. 71410 at 78.

<sup>5</sup> *Id.*

1 EWAZ's "next rate case" after issuance of Decision No. 71410 was the Company's  
2 2009 rate case for the Anthem and Sun City water districts and the Anthem/Agua Fria,  
3 Sun City, and Sun City West wastewater districts (ACC Docket Nos. W-01303A-09-0343  
4 and SW-01303A-09-0343). In that docket, EWAZ demonstrated compliance with  
5 Commission Order No. 71410. That 2009 rate case included and addressed possible rate  
6 consolidation for all of EWAZ's water and wastewater districts, including the issues  
7 raised in Decision No. 71410. In that 2009 rate case, EWAZ filed a "rate consolidation  
8 spreadsheet, which includes the necessary formulas and databases to model different  
9 consolidation scenarios."<sup>6</sup> EWAZ also filed a second "consolidated scenario" on May 27,  
10 2010 and a final rate consolidation scenario on June 25, 2010.<sup>7</sup> In further compliance  
11 with Decision No. 71410, EWAZ held town hall meetings relating to rate consolidation  
12 for customers in Lake Havasu City, Bullhead City/Fort Mohave, Sun City,  
13 Scottsdale/Paradise Valley, Tubac, Surprise (Agua Fria), Sun City West, and Anthem on  
14 July 6-7, 9, 12-15 and 26, 2010.<sup>8</sup> In no uncertain terms, EWAZ has complied fully with  
15 Decision No. 71410 and Mr. Magruder's Motion should be denied for that reason alone.

16 That's not to mention that the Commission declined to order system wide rate  
17 consolidation in that 2009 rate case. Rather, in Decision No. 72047 in Docket No. 09-  
18 0343, the Commission determined that "the facts demonstrate that the existing large  
19 disparity in rates among the Company's districts presents an insurmountable impediment,  
20 at this time, to statewide consolidation of rates for the Arizona-American water and  
21 wastewater districts."<sup>9</sup> The Commission further stated that "[a]fter careful consideration

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23 <sup>6</sup> Notice of Filing docketed January 20, 2010 in Docket Nos. W-01303A-09-0343 and  
SW-01303A-09-0343.

24 <sup>7</sup> Notice of Filing Consolidation Scenario docketed May 27, 2010 in Docket Nos. W-  
01303A-09-0343 and SW-01303A-09-0343; Notice of Filing Final Rate Design Schedules  
25 docketed June 25, 2010 in Docket Nos. W-01303A-09-0343 and SW-01303A-09-0343.

26 <sup>8</sup> Notice of Additional Town Hall Meetings docketed June 30, 2010 in Docket Nos. W-  
01303A-09-0343 and SW-01303A-09-0343.

<sup>9</sup> ACC Decision No. 72047 at 84.

1 of the facts and arguments presented by the parties, we decline to order the  
2 implementation of consolidated rates for the Arizona-American districts at this time.”<sup>10</sup>  
3 Instead of ordering consolidation, the Commission ordered that EWAZ “shall develop a  
4 consolidation proposal that includes all of its systems, as well as all of its systems without  
5 Sun City, and shall file those consolidated proposals in a future rate application.”<sup>11</sup> The  
6 Commission did not require that EWAZ propose rate consolidation in any specific rate  
7 filing, but only that EWAZ file consolidated rate proposals in a “future rate application.”

8 Not only did the Commission not implement rate consolidation, but in Decision  
9 No. 73227, the Commission deconsolidated the rates of the Anthem-Agua Wastewater  
10 District and further ordered a “three year revenue transition plan” (i.e., phase-in).<sup>12</sup> In that  
11 decision, the Commission went on to order that “it is reasonable and in the public interest  
12 to require the Company to make the system-wide rate filing as ordered in Decision No.  
13 72047 that includes all of the affected districts, including the Sun City West Wastewater  
14 district, as soon as possible, so that all affected parties will receive notice of, and will have  
15 a full opportunity to address, all the issues affecting the Company’s revenue requirement,  
16 and can make proposals either for or against consolidation or deconsolidation for  
17 Commission consideration.”<sup>13</sup> Under these facts, it is not practicable or possible for  
18 EWAZ to make the required system wide rate consolidation proposal until the three-year  
19 phase in for the Anthem-Agua Fria wastewater rates is complete sometime in June 2015.

20 All in all, EWAZ has fully and completely complied with Decision No. 71410  
21 relating to rate consolidation and EWAZ also has complied with Decision Nos. 72047 and  
22 73227 relating to possible rate consolidation. Mr. Magruder’s Motion doesn’t warrant or  
23 justify a stay of the pending 2014 rate case in any way, shape or form. To the contrary,

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24 <sup>10</sup> *Id.*

25 <sup>11</sup> *Id.* at 123.

26 <sup>12</sup> ACC Decision No. 73227 at 40-41.

<sup>13</sup> *Id.*

1 Commission Staff deemed EWAZ's rate application in this docket sufficient on April 4,  
2 2014 and there isn't any legal or factual basis for staying this rate case.

3 In his Motion, Mr. Magruder also makes substantive arguments of non-compliance  
4 with Article 15, § 12 of the Arizona Constitution relating to discriminatory rates and that  
5 EWAZ's proposed rates in the 2014 rate application are not just and reasonable. EWAZ  
6 does not address those arguments here because they are factual allegations that should be  
7 presented in pre-filed testimony and other evidence admitted into the record in this case.  
8 Mr. Magruder's substantive arguments on the merits are not valid grounds for staying this  
9 2014 rate case and those arguments should be ignored at this stage of the case.

10 For the reasons stated above, Mr. Magruder's Motion is premature, procedurally  
11 improper, factually and legally unsupported and should be denied.

12 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May, 2014.

13 FENNEMORE CRAIG, P.C.

14  
15 By 

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22 **ORIGINAL** and thirteen (13) copies  
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23 this 1<sup>st</sup> day of May, 2014, with:

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1 **COPY** of the foregoing was hand-delivered and/or mailed  
2 this 1<sup>st</sup> day of May, 2014, to:

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